



2026:AHC:173451

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No.
- 5182 of 2026

Smt Pinki And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Niteesh Kumar Mishra
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicants and learned A.G.A for the State and perused the record.
2. Counter affidavit filed today by learned A.G.A. is taken on record.
3. The present application has been filed on behalf of the applicants in Case Crime No. 301 of 2021, under Sections 420, 467, 468, 471, 406 IPC, Police Station Saidnagli, District Amroha with a prayer to grant them anticipatory bail.
4. Learned counsel for the applicants submits that the applicants are absolutely innocent and have been falsely implicated in the present case. They have nothing to do with the alleged offence in spite of that the police are trying to arrest the applicants. Learned counsel for the applicants further submits that the applicants undertake to cooperate during investigation and trial and shall appear as and when required by the Investigating Agency or the Court concerned. It has also been stated that, in case the applicants are granted anticipatory bail, they shall not misuse the liberty of bail, shall cooperate with the investigation, and shall abide by all the conditions that may be imposed by the Court.
5. On the other hand, learned A.G.A. has opposed the application for anticipatory bail. A preliminary objection has been raised by the learned A.G.A. that proceedings under Section 82 of Cr.P.C./84 of B.N.S.S. has been initiated against the applicant before filing of anticipatory bail application, therefore, the present anticipatory bail application is not maintainable in view of settled law. The applicant is neither cooperating

with the investigation nor is appearing before the investigating officer.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

7. It is not a disputed fact that the proceedings have been initiated against the applicants under Section 82 of Cr.P.C./84 of B.N.S.S. in connection with the present case crime number before filing their anticipatory bail application. The applicants were declared as proclaimed offenders.

8. The conduct of the applicants drag them under the umbrella of the law promulgated by the Hon'ble Apex Court in **Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955**. In the facts of that case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it revealed that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this-

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually."

9. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi)(2012) 8 SCC 730** has held that "Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant

had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

10. Further, the judgment passed in **Lavesh (supra)** was referred by the Hon'ble Apex Court in **State of Madhya Pradesh vs. Pradeep Sharma, (2014) 2 Supreme Court Cases 171** and referring to paragraph 12 of the judgment of **Lavesh (supra)**, in paragraph 16 of the said judgment, it was observed, relevant portion of which is as under :

"16.....It is clear from the above decision that if anyone is declared as an absconder / proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

11. In the case of **Srikant Upadhyay and Others vs. State of Bihar and Another, (2024) 12 SCC 382**, the Hon'ble Supreme Court has held that the power to grant anticipatory bail is an extraordinary power. While called upon to exercise the said power, the Court has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice. When warrant of arrest or proclamation is issued, the applicant is not entitled to invoking extraordinary power. The relevant paragraph no. 30 of **Srikant Upadhyay (supra)** is quoted as under:

"30. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."

12. In the case of **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, the Hon'ble Apex Court has held that arrest is a part of

procedure of the investigation to secure not only the presence of the accused but several other purposes. The power under Section 438 of Cr.P.C./482 of B.N.S.S. has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The relevant paragraph no. 69 of **P. Chidambaram (supra)** is reproduced as under:

"69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. "

13. Further, in the pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023 the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, which reads as under (paragraph 17 of the said judgment):

"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender. We may note that in Laves v. State (NCT of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Laves (supra) is the decision in State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Prem Shankar Prasad v. State of Bihar, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v. State of Maharashtra, (2022) 8 SCC 282, this Court concluded:

'68. As regards the implication of proclamation having been issued

against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. [For example, Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529, 2021 SCC OnLine SC 955] ..."

14. Hence, the law is discernible on the point that as per normal rule, anticipatory bail cannot be granted to an accused who is absconding or concealing himself in order to avoid execution of the process of the Court without offering any legal or plausible justification for his abscondence and consequently has been declared a proclaimed offender.

15. The deliberate oblivion to the process issued by the Court on the part of the applicants denude their claim to treat their application for grant of anticipatory bail as maintainable under the roof of a 'rare and exceptional case' and thereby to grant anticipatory bail to them.

16. In view of the above, declaring the present application for grant of anticipatory bail as not maintainable, I deem it not a fit case to grant anticipatory bail to the present applicants. The wilful defaulter(s), who does / do not cooperate with the trial court or investigation at all, is / are not entitled to get any relief from this Court by way of anticipatory bail.

17. The anticipatory bail application is, accordingly, **rejected**.

(Vivek Kumar Singh,J.)

August 18, 2026

Lalit Shukla